

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

---

ALAN J. KROK <i>et al.</i> ,	)	
	)	
	Plaintiffs,	Case No: 11-cv-01092
v.	)	Hon. Sharon J. Coleman
	)	
THE UNIVERSITY OF CHICAGO,	)	
	)	
	Defendant.	)
	)	

---

**DEFENDANT'S MOTION TO DISMISS**

Defendant, The University of Chicago (“University”), by and through its attorneys and pursuant to Federal Rule of Civil Procedure 12(b)(6), hereby moves this Court to enter an order granting its Motion to Dismiss Plaintiffs’ Complaint. In support of its Motion to Dismiss, Defendant submits the accompanying Memorandum of Law and states as follows:

1. On February 16, 2011, Plaintiffs filed their Class Action Complaint (“Complaint”) against the University. (Doc. 1).
2. The Complaint purports to be a claim brought under the Employment Retirement Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001, et seq., to enforce the provisions of Internal Revenue Code § 401(a) and all subparagraphs thereof. (Doc. 1 – Compl. ¶¶ 1, 33). Specifically, Plaintiffs claim that they are entitled to benefits under the University of Chicago Pension Plan for Staff Employees (“SEPP”) and that the failure to pay benefits constitutes a violation of Internal Revenue Code § 401(a). (Doc. 1 – Compl. ¶¶ 15-24, 33-34). Plaintiffs’ Complaint fails to state a claim upon which relief can be granted.
3. First, the Seventh Circuit does not recognize ERISA actions brought against retirement plans to enforce the provisions of IRC Section 401. *Reklau v. Merchants Nat'l Corp.*, 808 F.2d 628, 631 (7th Cir. 1986).

4. Second, ERISA requires that Plaintiffs exhaust all of the administrative remedies available to them under the applicable plan prior to filing a suit seeking benefits. *Zhou v. The Guardian Life Ins. Co.*, 295 F.3d 677, 679-80 (7th Cir. 2002). The Complaint demonstrates that Plaintiffs have not exhausted the administrative remedies explicitly provided for under the SEPP. Accordingly, Plaintiffs' claims must be dismissed for this reason as well.

WHEREFORE, Defendant respectfully requests that the Court enter an order dismissing all claims asserted against it with prejudice and granting it any other relief this Court deems appropriate under the circumstances.

Dated: April 18, 2011

Respectfully submitted,

/s/ Jeffrey J. Kmoch  
Sari M. Alamuddin  
Jeffrey J. Kmoch  
Morgan Lewis & Bockius LLP  
77 West Wacker Drive  
Chicago, IL 60601  
Tel: (312) 324-1000  
Fax: (312) 324-1001  
salamuddin@morganlewis.com  
jkmoch@morganlewis.com

Brian T. Ortelere  
Morgan Lewis & Bockius LLP  
1701 Market St.  
Philadelphia, PA 19103  
Tel: (215) 963-5000  
Fax: (215) 963-5001  
bortelere@morganlewis.com  
*pro hac vice pending*

*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that, on April 18, 2011, I electronically filed Defendant's Motion to Dismiss with the Clerk of the Court using the ECF system, which will send notification of such filing to the following:

Jac A. Cotiguala  
Brian D. Massatt  
Jac A. Cotiguala & Associates  
431 South Dearborn Street, Suite 606  
Chicago, Illinois 60605  
Telephone: (312) 939-2100  
jac@wageandhour.com  
bmassatt@comcast.net

/s/ Jeffrey J. Kmoch  
Jeffrey J. Kmoch